

## **CHAPTER 31-11 PRESUMPTIONS, MAXIMS, AND ESTOPPELS**

**31-11-01. Presumptions - When controvertible - When jury bound to follow.** Superseded by N.D.R.Crim.P., Rule 26; N.D.R.Ev., Rule 301.

**31-11-02. Conclusive presumptions.** The following presumptions, and no others, are conclusive:

1. A malicious and guilty intent from the deliberate commission of an unlawful act for the purpose of injuring another.
2. The truth of the facts from a recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title, but this rule does not apply to a recital of a consideration.
3. The judgment or order of a court when declared by the laws of this state to be conclusive, but such judgment or order shall be alleged in the pleadings, if there is an opportunity to do so. If there is no such opportunity, the judgment or order may be used as evidence.
4. The issue of a wife cohabiting with her husband who is not impotent is presumed indisputably to be legitimate.
5. Any other presumption which by statute expressly is made conclusive.

**31-11-03. Disputable presumptions.** All presumptions other than those set forth in section 31-11-02 are satisfactory if uncontradicted. They are denominated disputable presumptions and may be contradicted by other evidence. The following are of that kind:

1. That a person is innocent of crime or wrong.
2. That an unlawful act was done with an unlawful intent.
3. That a person intends the ordinary consequences of that person's voluntary act.
4. That a person takes ordinary care of that person's own concerns.
5. That evidence willfully suppressed would be adverse if produced.
6. That higher evidence would be adverse if inferior is produced.
7. That money paid by one to another was due the latter.
8. That a thing delivered by one to another was due the latter.
9. That an obligation delivered up to the debtor has been paid.
10. That former rents or installments have been paid when a receipt for the latter is produced.
11. That things which a person possesses are owned by that person.
12. That a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership.
13. That a person in possession of an order on that person for the payment of money, or the delivery of a thing, has paid the money or delivered the thing accordingly.

14. That a person acting in a public office was appointed regularly to it.
15. That official duty has been performed regularly.
16. That a court or judge, acting as such, whether in this state or any other state or country, was acting in the lawful exercise of that court's or judge's lawful jurisdiction.
17. That a judicial record, when not conclusive, still does determine or set forth the rights of the parties correctly.
18. That all matters within an issue were laid before the jury and passed upon by it, and, in like manner, that all matters within a submission to arbitration were laid before the arbitrator and passed upon by the arbitrator.
19. That private transactions have been fair and regular.
20. That the ordinary course of business has been followed.
21. That a promissory note or bill of exchange was given or endorsed for a sufficient consideration.
22. That an endorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill.
23. That a writing is dated truly.
24. That a letter duly directed and mailed was received in the regular course of the mail.
25. Identity of person from identity of name.
26. That a person not heard from in seven years is dead.
27. That acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact.
28. That things have happened according to the ordinary course of nature and the ordinary habits of life.
29. That persons acting as copartners have entered into a contract of copartnership.
30. That a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage.
31. That a thing once found to exist continues as long as is usual with things of that nature.
32. That the law has been obeyed.
33. That a document or writing more than thirty years old is genuine when the same generally has been acted upon since as genuine by persons having an interest in the question, and its custody has been satisfactorily explained.
34. That a printed and published book of statutes or other records or reports purporting to be printed or published by public authority was so printed or published.
35. That a printed and published book purporting to contain reports of cases adjudged in the tribunals of the state or country where the book is published contains correct reports of such cases.

36. That a trustee or other person whose duty it was to convey real property to a particular person actually has conveyed to heirs, when such presumption is necessary to perfect the title of such person or his successor in interest.
37. That the owner of any land who, without a reservation of the owner's right, consents to the uninterrupted use by the public of such land for a burial ground for five years intends to dedicate it to the public for that purpose.
38. That there was a good and sufficient consideration for a written contract.
39. That the foreign law is the same as the law of this state.
40. A domicile once acquired is presumed to continue until it is shown to have been changed.

**31-11-04. Presumption of death as to estates in real property.** If any person upon whose life any estate in real property depends remains without the United States, or is absent in the state or elsewhere for seven years together, such person shall be accounted dead naturally in any action or proceeding concerning such property in which the person's death shall come in question, unless it is proved affirmatively that the person was alive during that time.

**31-11-04.1. Finding of death under Federal Missing Persons Act prima facie evidence.** Written findings of presumed death, made by the secretary of war, the secretary of the navy, or other officer or employee of the United States authorized to make such findings, pursuant to the Federal Missing Persons Act, as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office, or other place in this state as prima facie evidence of the death of the person therein found to be dead, and the date, circumstances and place of the person's disappearance.

**31-11-04.2. Other findings under Federal Missing Persons Act as prima facie evidence.** An official written report or record or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, made by an officer or an employee of the United States authorized by the act referred to in section 31-11-04.1 or by any other law of the United States to make same, shall be received in any court, office, or other place in this state as prima facie evidence that such person is missing, missing in action, interned in a neutral country, beleaguered or captured by an enemy, or is dead, or is alive, as the case may be.

**31-11-04.3. Reports and copies deemed signed by authorized officer.** For the purposes of sections 31-11-04.1 and 31-11-04.2, any finding, report, or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and a person signing same shall prima facie be deemed to have acted within the scope of the person's authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of the person's authority so to certify.

**31-11-05. Maxims of jurisprudence - How to be used and applied - List.** The maxims of jurisprudence set forth in this section are not intended to qualify any of the provisions of the laws of this state, but to aid in their just application:

1. When the reason of a rule ceases so should the rule itself.
2. When the reason is the same the rule should be the same.
3. A person must not change that person's purpose to the injury of another.

4. Anyone may waive the advantage of a law intended solely for that person's benefit, but a law established for a public reason cannot be contravened by a private agreement.
5. One must so use one's own rights as not to infringe upon the rights of another.
6. One who consents to an act is not wronged by it.
7. Acquiescence in error takes away the right of objecting to it.
8. A person cannot take advantage of that person's own wrong.
9. A person who fraudulently has dispossessed himself or herself of a thing may be treated as if the person still had possession.
10. A person who can and does not forbid that which is done on that person's behalf is deemed to have bidden it.
11. No one should suffer by the act of another.
12. One who takes the benefit must bear the burden.
13. One who grants a thing is presumed to grant also whatever is essential to its use.
14. For every wrong there is a remedy.
15. Between those who are equally in the right or equally in the wrong the law does not interpose.
16. Between rights otherwise equal the earliest is preferred.
17. No person is responsible for that which no person can control.
18. The law helps the vigilant before those who sleep on their rights.
19. The law respects form less than substance.
20. That which ought to have been done is to be regarded as done in favor of one to whom and against one from whom performance is due.
21. That which does not appear to exist is to be regarded as if it did not exist.
22. The law never requires impossibilities.
23. The law neither does nor requires idle acts.
24. The law disregards trifles.
25. Particular expressions qualify those which are general.
26. Contemporaneous exposition is in general the best.
27. The greater contains the less.
28. Superfluity does not vitiate.
29. That is certain which can be made certain.
30. Time does not confirm a void act.

31. The incident follows the principal, not the principal the incident.
32. An interpretation which gives effect is preferred to one which makes void.
33. Interpretation must be reasonable.
34. When one of two innocent persons must suffer by the act of a third, the one by whose negligence it happened must be the sufferer.

**31-11-06. Estoppel by declaration, act, or omission.** When a party, by that party's own declaration, act, or omission, intentionally and deliberately has led another to believe a particular thing true and to act upon such belief, that party shall not be permitted to falsify it in any litigation arising out of such declaration, act, or omission.

**31-11-07. Tenant estopped from denying landlord's title.** A tenant shall not be permitted to deny the title of the tenant's landlord at the time of the commencement of the relation.